

AMENDED IN SENATE JUNE 29, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2116

Introduced by Assembly Member Evans

February 18, 2010

An act to amend Section 170.9 of the Code of Civil Procedure, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, as amended, Evans. Judges: gifts and honoraria.

Existing law limits the monetary value of gifts that may be accepted by judges and prohibits judges from accepting any honorarium. The Commission on Judicial Performance is required to enforce these prohibitions.

This bill would make those provisions applicable to subordinate judicial officers. *The bill would require the court employing the subordinate judicial officer to exercise initial jurisdiction and the Commission on Judicial Performance to exercise discretionary jurisdiction to enforce those prohibitions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 170.9 of the Code of Civil Procedure is
- 2 amended to read:

1 170.9. (a) A judge shall not accept gifts from a single source
2 in a calendar year with a total value of more than two hundred fifty
3 dollars (\$250). This section shall not be construed to authorize the
4 receipt of gifts that would otherwise be prohibited by the California
5 Code of Judicial Ethics adopted by the California Supreme Court
6 or any other law.

7 (b) This section shall not prohibit or limit the following:

8 (1) Payments, advances, or reimbursements for travel and related
9 lodging and subsistence permitted by subdivision (e).

10 (2) Wedding gifts and gifts exchanged between individuals on
11 birthdays, holidays, and other similar occasions, if the gifts
12 exchanged are not substantially disproportionate in value.

13 (3) A gift, bequest, favor, or loan from a person whose
14 preexisting relationship with a judge would prevent the judge from
15 hearing a case involving that person, under the Code of Judicial
16 Ethics adopted by the California Supreme Court.

17 (c) For purposes of this section, “judge” includes all of the
18 following:

19 (1) Judges of the superior courts.

20 (2) Justices of the courts of appeal and the Supreme Court.

21 (3) Subordinate judicial officers, as defined in Section 71601
22 of the Government Code.

23 (d) The gift limitation amounts in this section shall be adjusted
24 biennially by the Commission on Judicial Performance to reflect
25 changes in the Consumer Price Index, rounded to the nearest ten
26 dollars (\$10).

27 (e) Payments, advances, or reimbursements, for travel, including
28 actual transportation and related lodging and subsistence that is
29 reasonably related to a judicial or governmental purpose, or to an
30 issue of state, national, or international public policy, is not
31 prohibited or limited by this section if any of the following apply:

32 (1) The travel is in connection with a speech, practice
33 demonstration, or group or panel discussion given or participated
34 in by the judge, the lodging and subsistence expenses are limited
35 to the day immediately preceding, the day of, and the day
36 immediately following the speech, demonstration, or discussion,
37 and the travel is within the United States.

38 (2) The travel is provided by a government, a governmental
39 agency or authority, a foreign government, a foreign bar
40 association, an international service organization, a bona fide public

1 or private educational institution, as defined in Section 203 of the
2 Revenue and Taxation Code, or a nonprofit charitable or religious
3 organization that is exempt from taxation under Section 501(c)(3)
4 of the Internal Revenue Code, or by a person domiciled outside
5 the United States who substantially satisfies the requirements for
6 tax exempt status under Section 501(c)(3) of the Internal Revenue
7 Code.

8 For purposes of this section, “foreign bar association” means an
9 association of attorneys located outside the United States (A) that
10 performs functions substantially equivalent to those performed by
11 state or local bar associations in this state and (B) that permits
12 membership by attorneys in that country representing various legal
13 specialties and does not limit membership to attorneys generally
14 representing one side or another in litigation. “International service
15 organization” means a bona fide international service organization
16 of which the judge is a member. A judge who accepts travel
17 payments from an international service organization pursuant to
18 this subdivision shall not preside over or participate in decisions
19 affecting that organization, its state or local chapters, or its local
20 members.

21 (3) The travel is provided by a state or local bar association or
22 judges professional association in connection with testimony before
23 a governmental body or attendance at any professional function
24 hosted by the bar association or judges professional association,
25 the lodging and subsistence expenses are limited to the day
26 immediately preceding, the day of, and the day immediately
27 following the professional function.

28 (f) Payments, advances, and reimbursements for travel not
29 described in subdivision (e) are subject to the limit in subdivision
30 (a).

31 (g) No judge shall accept any honorarium.

32 (h) “Honorarium” means a payment made in consideration for
33 any speech given, article published, or attendance at a public or
34 private conference, convention, meeting, social event, meal, or
35 like gathering.

36 (i) “Honorarium” does not include earned income for personal
37 services that are customarily provided in connection with the
38 practice of a bona fide business, trade, or profession, such as
39 teaching or writing for a publisher, and does not include fees or

1 other things of value received pursuant to Section 94.5 of the Penal
2 Code for performance of a marriage.

3 For purposes of this section, “teaching” shall include
4 presentations to impart educational information to lawyers in events
5 qualifying for credit under mandatory continuing legal education,
6 to students in bona fide educational institutions, and to associations
7 or groups of judges.

8 (j) Subdivisions (a) and (e) shall apply to all payments, advances,
9 and reimbursements for travel and related lodging and subsistence.

10 (k) This section does not apply to any honorarium that is not
11 used and, within 30 days after receipt, is either returned to the
12 donor or delivered to the Controller for deposit in the General Fund
13 without being claimed as a deduction from income for tax purposes.

14 (l) “Gift” means a payment to the extent that consideration of
15 equal or greater value is not received and includes a rebate or
16 discount in the price of anything of value unless the rebate or
17 discount is made in the regular course of business to members of
18 the public without regard to official status. A person, other than a
19 defendant in a criminal action, who claims that a payment is not
20 a gift by reason of receipt of consideration has the burden of
21 proving that the consideration received is of equal or greater value.
22 However, the term “gift” does not include any of the following:

23 (1) Informational material such as books, reports, pamphlets,
24 calendars, periodicals, cassettes and discs, or free or reduced-price
25 admission, tuition, or registration, for informational conferences
26 or seminars. No payment for travel or reimbursement for any
27 expenses shall be deemed “informational material.”

28 (2) Gifts that are not used and, within 30 days after receipt, are
29 returned to the donor or delivered to a charitable organization
30 without being claimed as a charitable contribution for tax purposes.

31 (3) Gifts from a judge’s spouse, child, parent, grandparent,
32 grandchild, brother, sister, parent-in-law, brother-in-law,
33 sister-in-law, nephew, niece, aunt, uncle, or first cousin or the
34 spouse of any such person. However, a gift from any of those
35 persons shall be considered a gift if the donor is acting as an agent
36 or intermediary for a person not covered by this paragraph.

37 (4) Campaign contributions required to be reported under
38 Chapter 4 (commencing with Section 84100) of Title 9 of the
39 Government Code.

40 (5) Any devise or inheritance.

1 (6) Personalized plaques and trophies with an individual value
2 of less than two hundred fifty dollars (\$250).

3 (7) Admission to events hosted by state or local bar associations
4 or judges' professional associations, and provision of related food
5 and beverages at those events, when attendance does not require
6 "travel," as described in paragraph (3) of subdivision (e).

7 (m) The Commission on Judicial Performance shall enforce the
8 prohibitions of this section *with regard to judges of the superior*
9 *courts and justices of the courts of appeal and the Supreme Court.*
10 *With regard to subordinate judicial officers, consistent with Section*
11 *18.1 of Article VI the California Constitution, the court employing*
12 *the subordinate judicial officer shall exercise initial jurisdiction*
13 *to enforce the prohibitions of this section and the Commission on*
14 *Judicial Performance shall exercise discretionary jurisdiction with*
15 *respect to the enforcement of the prohibitions of this section.*